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NOTE

From:	Presidency
To:	Delegations
No. Cion doc.:	11818/22 + ADD 1
Subject:	Draft Council Decision authorising the opening of negotiations on behalf of the European Union for a Council of Europe convention on artificial intelligence, human rights, democracy and the rule of law - Presidency compromise text - Options A and B

I. INTRODUCTION

1. The Commission adopted the Recommendation for a Council Decision authorising the opening of negotiations on behalf of the European Union for a Council of Europe convention on artificial intelligence, human rights, democracy and the rule of law on 18 August 2022.
2. The draft decision and the negotiating directives contained in the annex, as recommended by the Commission (doc. 11818/22 and 11818/22/ADD1), were presented and discussed in the WP TELECOM on 8 September 2022. The Czech Presidency requested the delegations to send in their written comments on the text of the decision and the negotiating directives by 15 September 2022.

3. Based on the written comments received, and working in close collaboration with the Council Legal Service, the Czech Presidency has prepared two compromise versions of the decision and the negotiating directives, **Option A** and **Option B**, which can be found in Annex I and Annex II respectively.
4. **During the WP TELECOM meeting on 13 October 2022, the Czech Presidency intends to discuss the two options mentioned above, and invites the delegations to indicate their preferred option and any other remaining points to be addressed in the text of the decision and the negotiating directives.**
5. The changes in the document compared with the Commission's recommendation (doc. 11818/22 and 11818/22/ADD1) are underlined, with additions marked with **bold**, and deletions with ~~striketrough~~.

II. MAIN CHANGES

1. Changes introduced in both Options A and B

1.1 In both options, the substantive legal basis (Article 114 TFUE) has been added in the text of the decision, and a change has been introduced whereby the Commission is authorised to negotiate the Council of Europe AI convention as regards matters falling under the exclusive Union competence. The text also clarifies that this is without prejudice to the possibility for the Member States to intervene during the negotiations in support of the Union position. Moreover, it has been specified that the appropriate committee to which the Commission should report on the negotiations should be WP TELECOM, both in the framework of working party meetings and attachés meetings.

1.2 With the exception of **point 12**, the changes introduced in the negotiating directives in both options are the same, and they aim to further clarify the modalities of collaboration between the Commission and the Council during the negotiations on the Council of Europe AI convention. Some modifications have also been made in both options to clarify the interplay between the AI convention and the AI Act.

2. Option A

2.1 In **Option A**, the text of the decision contains a separate **Recital 7b** specifying that national security should remain the sole responsibility of each Member State in accordance with Article 4(2) of the TEU. Furthermore, **point 12** of the negotiating directives does not provide for an alignment of the respective scope of the AI Act and the Council of Europe AI convention, in particular on national security which is included in the scope of that convention.

2.2 Consequently, the wording of **Article 3** makes a clear reference to the fact that the subject matter of the negotiations falls partially within the competence of the Union, and partially within the competence of its Member States.

3. Option B

3.1 In **Option B**, the text of the decision does not contain the above mentioned reference to national security being the sole responsibility of each Member State.

3.2 Furthermore, in the text of negotiating directives, in **point 12**, there is additional wording specifying that during the negotiations in the Council of Europe the Union should aim to achieve that the provisions of the convention are fully consistent with the objectives and the provisions of the proposed AI Act also as regards the scope. This means that questions related to national security should not be addressed by the convention contrary to what is provided for in the zero draft, because national security is excluded from the scope of the AI Act.

3.3 Consequently, the wording of **Article 3** only covers the principle of sincere cooperation, without an explicit reference to the fact that the subject matter of the negotiations falls partially within the competence of the Union, and partially within the competence of its Member States.

OPTION A

Recommendation for a **First Draft of**

COUNCIL DECISION

authorising the opening of negotiations on behalf of the European Union for a Council of Europe convention on artificial intelligence, human rights, democracy and the rule of law

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles **114 and** 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) In 2021, the Council of Europe Committee of Ministers set up a Committee on Artificial Intelligence (CAI) for the period 2022-2024, tasked with setting up an international negotiation process to develop a legal framework on the development, design and application of artificial intelligence (AI), based on the Council of Europe's standards on human rights, democracy and the rule of law, and conducive to innovation¹.
- (2) On 30 June 2022, the Council of Europe Committee of Ministers instructed the Committee on Artificial Intelligence to proceed speedily with the elaboration of a legally binding instrument of a transversal nature ('convention'/ 'framework convention') on artificial intelligence based on the Council of Europe's standards on human rights, democracy and the rule of law, in line with its terms of reference, focused on general common principles, conducive to innovation, and open to participation by non-member States, while taking into account other relevant existing international legal frameworks or those under development².
- (3) Subsequently, the Chair of the Committee on Artificial Intelligence proposed a zero draft of the (framework) convention that would apply to the design, development and application of AI systems. The zero draft includes: provisions on purpose and object, scope, definitions, fundamental principles including procedural safeguards and rights applicable to all AI systems irrespective of their level of risk, additional measures for AI systems in the public sector and for AI systems posing 'unacceptable' and 'significant' levels of risk, a follow-up and cooperation mechanism; final provisions, including a possibility for the Union to accede

¹ [Committee of Ministers, CAI's Terms of Reference \(Extract from CM\(2021\) 131\)](#)

² [Committee of Ministers, Decision concerning the work of the CAI at the 132nd Session of the Committee of Ministers – Follow-up CM/Del/Dec\(2022\)1438/10.4 / 30 June 2022](#).

to the convention; and an appendix, under development, on a methodology for risk and impact assessment of AI systems.

- (4) The Union has adopted common rules that will be affected by the elements considered for the Council of Europe convention. This includes in particular a comprehensive set of rules in the area of the single market for products³ and services⁴ for which AI systems can be used, as well ~~as rules on the protection of fundamental rights enshrined in the EU Charter of Fundamental Rights⁵ and implemented in~~ secondary Union legislation⁶ **implementing the EU Charter of Fundamental Rights⁷**, considering that those rights are likely to be adversely affected in certain circumstances by the development and use of certain AI systems.
- (5) Moreover, on 21 April 2021, the Commission submitted a legislative proposal for a regulation laying down harmonised rules for AI⁸, currently being negotiated by the European Parliament and the Council. The envisaged Council of Europe convention to a large extent overlaps with the legislative proposal in its scope, since both instruments aim to lay down rules applicable to the design, development and application of AI systems, provided and used by either public or private entities.
- (6) Therefore, the conclusion of the Council of Europe convention under consideration may affect existing and foreseeable future common Union rules or alter their scope within the meaning of Article 3(2) of the Treaty on the Functioning of the European Union.

³ E.g. Directive 2001/95/EC on general product safety, OJ L 11, 15.1.2002, pp 4-17, Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, OJ L 210, 7.8.1985, p. 29-33 and sector-specific product safety legislation such as Directive 2006/42/EC on machinery OJ L 157, 9.6.2006, p. 24-86; Directive 2014/53/EU on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment, OJ L 153, 22.5.2014, pp. 62-106; Directive 2009/48/EC on the safety of toys, OJ L 170, 30.6.2009, pp. 1-37; Regulation (EU) 2017/745 on medical devices, OJ L 117, 5.5.2017, p. 1; Regulation (EU) 2019/2144 on type-approval requirements for motor vehicles and their trailers, and systems, components and separate technical units intended for such vehicles, as regards their general safety and the protection of vehicle occupants and vulnerable road users OJ L 325, 16.12.2019), p. 1

⁴ E.g. Directive 2006/123/EC on services in the internal market and sector-specific service legislation such as Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, OJ L 178, 17.7.2000, pp. 1-16; Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers OJ L 133, 22.5.2008, pp. 66-92.

⁵ ~~Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, pp. 391-40.~~

⁶ E.g. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, pp. 1-88; Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, pp. 89-131; Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L 201, 31.7.2002, pp. 37-47; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin OJ L 180, 19.7.2000, pp. 22-26; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation OJ L 303, 2.12.2000, pp. 16-22.

⁷ **Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, pp. 391-40.**

⁸ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE (ARTIFICIAL INTELLIGENCE ACT) AND AMENDING CERTAIN UNION LEGISLATIVE ACTS, COM/2021/206 final.

- (7) In order to protect the integrity of Union law and to ensure that the rules of international law and Union law remain consistent, it is necessary that the Commission be authorised to negotiate on behalf of the Union the Council of Europe convention on artificial intelligence, human rights, democracy and the rule of law as regards matters falling under the exclusive Union competence.
- (7a) This Decision should be without prejudice to the participation of Member States in the negotiations for the Council of Europe convention on artificial intelligence, human rights, democracy and the rule of law (the “Convention”) and to any subsequent decision to conclude, sign or ratify the Convention or for the Union to accede to the Convention. In the implementation of the envisaged convention, it would be for the Member States to define, in accordance with Article 216(2) TFEU, their essential security interests and to adopt appropriate measures to ensure their internal and external security while not rendering EU law inapplicable or exempting them from their obligation to comply with EU law.
- (7b) National security should remain the sole responsibility of each Member State in accordance with Article 4(2) of the TEU.
- (7c) In view of the special situation resulting from the fact that all Member States are also Members of the Council of Europe, the Member States of the EU present at the negotiations should, in accordance with the principle of sincere cooperation as referred to in Article 4(3) of the TEU, in full mutual respect, support the Union negotiator in carrying out the tasks following from the Treaties.
- (8) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered an opinion on ...²

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, the Council of Europe (framework) convention on artificial intelligence, human rights, democracy and the rule of law, as regards matters falling under the exclusive Union competence.

Article 2

The negotiations shall be conducted on the basis of the ~~The~~ negotiating directives ~~are~~ set out in the Annex to this Decision which may be revised and further developed as appropriate depending on the evolution of the negotiations.

⁹ Reference of the Opinion of the EDPS to be added once available.

Article 3

The negotiations shall be conducted in consultation with the Working Party on Telecommunications and Information Society and with Telecommunications and Information Society Attachés ~~[name of the special committee to be inserted by the Council]~~.

The Commission shall regularly report to the special committee referred to in the first subparagraph on the steps undertaken pursuant to this Decision and consult it on a regular basis.

Whenever so requested by the Council, the Commission shall report to it on the conduct and the outcome of the negotiations, including in writing.

To the extent that the subject matter of the negotiations falls partially within the competence of the Union and partially within the competence of its Member States, the Commission and the Member States shall cooperate closely during the negotiating process, with a view to ensuring unity in the external representation of the Union.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*

ANNEX

to the Recommendation for a Council Decision authorising the opening of negotiations on behalf of the European Union for a Council of Europe convention on artificial intelligence, human rights, democracy and the rule of law

Regarding the process of the negotiations, the Union should aim to achieve that:

- (1) The negotiation process is open, inclusive, ~~and~~ transparent, and evidence-based ~~on robust evidence and~~ and is based on cooperation in good faith.
- (2) The negotiation process is based on an inclusive consultation process and enables meaningful participation for all relevant stakeholders, including civil society, the private sector, academia, non-governmental organisations, standardisation organisations and other

relevant actors with expertise relating to the regulation of the design, development and application of artificial intelligence (AI) systems.

- (3) All inputs received from all negotiating Parties are considered on an equal basis to ensure an inclusive process.
- (4) The negotiation process is based on an effective and realistic work programme for the elaboration of the (framework) convention.

Regarding the general objectives for the negotiations, the Union should aim to achieve that:

- (5) The convention is compatible with EU single market law and other areas of EU law, including its general principles of EU law and the fundamental rights and freedoms as enshrined in the EU Charter of Fundamental Rights and implemented through secondary EU legislation.
- (6) The convention is compatible with the proposed artificial intelligence act (AI act)¹⁰, taking into account future developments in the legislative process.
- (7) **The aim of the convention is to ensure full consistency with respect for human rights, the functioning of democracy and the observance of rule of law in the developing, designing and applying of AI systems.** The convention serves as an effective and future-proof regulatory framework for AI with a view to ensuring a high level of protection of human rights and preservation of European values, while at the same time fostering innovation, increasing legal certainty and trust; the convention also acknowledges the potential benefits of AI for important public interests, including to protect and facilitate the exercise of human rights in the digital environment, to improve societal and environmental wellbeing and health and to promote technological progress.
- (8) The convention strengthens the international cooperation between the European Union and other European and non-European countries which may accede to the convention.
- (9) The convention **should be based on the Council of Europe's standards on human rights, democracy and the rule of law and** is compatible with existing Council of Europe instruments, in particular the European Convention on Human Rights and its Protocols, Council of Europe Convention No 108 for the protection of individuals with regard to automatic processing of personal data, as amended by Protocol CETS 223, and other relevant Council of Europe legal instruments; the convention avoids duplication with those instruments and any adverse impact on their application or the further accession of any country to them; the convention addresses the novel risks and challenges posed by the specific features of certain AI systems for compliance with and effective enforcement of existing rights protected under those instruments.

¹⁰ Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain union legislative acts, COM/2021/206 final.

- (10) The convention is compatible with the commitments of the European Union in respect of other international agreements to which it is a party, and avoids any adverse impact on their effective application; in particular, the convention is in line with the Union's international trade commitments and avoids unnecessary or unjustified restrictions on trade.

Regarding the substance of the negotiations, the Union should aim to achieve that:

- (11) The provisions of the convention are fully compatible with EU single market law and other areas of EU law, including the general principles of EU law and fundamental rights, as enshrined in the EU Charter of Fundamental Rights and implemented in secondary EU legislation.
- (12) The provisions of the convention are ~~fully compatible~~ **consistent** with the **objectives and the** provisions of the proposed AI act, taking into account future developments in the legislative process.
- (13) The provisions of the convention allow parties to grant a wider protection than stipulated in the Convention and in no way undermine the level of protection of fundamental rights and freedoms and the guarantees provided in Union law, including the principle that authorities supervising fundamental rights need to be independent in so far as this is required under EU Law.
- (14) The convention follows a risk-based approach and lays down proportionate, effective and clear rules applicable to public and private entities across the AI value chain, which are meant to minimise the risks arising from the design, development and application of certain AI systems, while avoiding any unnecessary and disproportionate burdens or restrictions on the activities of those entities or constraints on technological development; in particular, the scope and stringency of any regulatory intervention are balanced, justified and scaled in accordance with the levels of risk posed by the AI systems.
- (15) The provisions of the convention are formulated, to the extent possible, in a future-proof and flexible manner to allow consideration of future technological, market, societal and environmental developments related to AI.
- (16) The convention provides for rules for the design, development and application of AI systems which avoid overlaps and provide meaningful added value compared to other relevant international or regional conventions, in particular in the area of data protection; those rules for AI are compatible with such conventions and with international human rights standards.
- (17) The convention includes provisions for the effective implementation of the rules applicable to the design, development, and application of AI systems, notably with appropriate *ex ante* and *ex post* compliance and control mechanisms, and recognises the role of standards, certification mechanisms, independent third parties involved in compliance checks and competent supervisory authorities.

- (18) The convention allows for measures in support of innovation, including testing of AI systems and the establishment and operation of regulatory sandboxes to foster AI innovation in a controlled environment under the supervision of competent authorities.
- (19) The convention takes into account the special needs of small and medium-sized enterprises (SMEs), does not disproportionately affect their competitiveness and obliges the Parties to take specific measures to support them.
- (20) The convention takes into account the interest of law enforcement and judicial authorities for the purpose of the prevention, investigation, detection and prosecution of criminal offences, including with regard to the confidentiality and integrity of such investigations.
- (21) The convention provides for effective supervision by competent authorities and cooperation mechanisms that allow for its effective implementation.

Regarding the functioning of the convention, the Union should aim to achieve that:

- (22) The convention includes a disconnection clause that allows the EU Member States, in their mutual relations, to continue to apply EU law in matters covered by the scope of the convention.
- (23) The convention provides for an appropriate mechanism to ensure its implementation and includes final provisions, including on the settlement of disputes, signature, ratification, acceptance, approval and accession, entry into force, amendment, suspension, denunciation and depositary and languages, modelled where possible and appropriate on provisions of other relevant Council of Europe conventions.
- (24) The convention allows for the European Union to become a party to it.

Regarding procedure for negotiations:

- (25) **The Commission shall conduct negotiations on behalf of the Union, for matters falling under the exclusive Union competence.**
- (26) **The negotiations, including each negotiation round, must be prepared well in advance. To this end, the Commission shall inform the Council of the schedule anticipated and the issues to be negotiated and shall share the relevant information as early as possible.**
- (27) **In accordance with the principle of sincere cooperation, the Commission and the Member States shall cooperate closely during the negotiation process.**
- (28) **The negotiating sessions shall be preceded by a meeting of the Working Party on Telecommunications and Information Society or Telecommunications and**

Information Society Attachés in order to identify the key issues, formulate opinions and provide guidance.

- (29) **The Commission shall report to the Working Party on Telecommunications and Information Society or to Telecommunications and Information Society Attachés on the outcome of the negotiations after each negotiating session, including in writing.**
- (30) **The Commission shall inform the Council and consult the Working Party on Telecommunications and Information Society or Telecommunications and Information Society Attachés on any important issue that may arise during the negotiations.**
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OPTION B

Recommendation for a **First Draft of**

COUNCIL DECISION

authorising the opening of negotiations on behalf of the European Union for a Council of Europe convention on artificial intelligence, human rights, democracy and the rule of law

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles **114 and 218(3)** and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) In 2021, the Council of Europe Committee of Ministers set up a Committee on Artificial Intelligence (CAI) for the period 2022-2024, tasked with setting up an international negotiation process to develop a legal framework on the development, design and application of artificial intelligence (AI), based on the Council of Europe's standards on human rights, democracy and the rule of law, and conducive to innovation¹.
- (2) On 30 June 2022, the Council of Europe Committee of Ministers instructed the Committee on Artificial Intelligence to proceed speedily with the elaboration of a legally binding instrument of a transversal nature ('convention'/ 'framework convention') on artificial intelligence based on the Council of Europe's standards on human rights, democracy and the rule of law, in line with its terms of reference, focused on general common principles, conducive to innovation, and open to participation by non-member States, while taking into account other relevant existing international legal frameworks or those under development².
- (3) Subsequently, the Chair of the Committee on Artificial Intelligence proposed a zero draft of the (framework) convention that would apply to the design, development and application of AI systems. The zero draft includes: provisions on purpose and object, scope, definitions, fundamental principles including procedural safeguards and rights applicable to all AI systems irrespective of their level of risk, additional measures for AI systems in the public sector and for AI systems posing 'unacceptable' and 'significant' levels of risk, a follow-up and cooperation mechanism; final provisions, including a possibility for the Union to accede

¹ [Committee of Ministers, CAI's Terms of Reference \(Extract from CM\(2021\) 131\)](#)

² [Committee of Ministers, Decision concerning the work of the CAI at the 132nd Session of the Committee of Ministers – Follow-up CM/Del/Dec\(2022\)1438/10.4 / 30 June 2022](#).

to the convention; and an appendix, under development, on a methodology for risk and impact assessment of AI systems.

- (4) The Union has adopted common rules that will be affected by the elements considered for the Council of Europe convention. This includes in particular a comprehensive set of rules in the area of the single market for products³ and services⁴ for which AI systems can be used, as well ~~as rules on the protection of fundamental rights enshrined in the EU Charter of Fundamental Rights⁵ and implemented in~~ secondary Union legislation⁶ **implementing the EU Charter of Fundamental Rights⁷**, considering that those rights are likely to be adversely affected in certain circumstances by the development and use of certain AI systems.
- (5) Moreover, on 21 April 2021, the Commission submitted a legislative proposal for a regulation laying down harmonised rules for AI⁸, currently being negotiated by the European Parliament and the Council. The envisaged Council of Europe convention to a large extent overlaps with the legislative proposal in its scope, since both instruments aim to lay down rules applicable to the design, development and application of AI systems, provided and used by either public or private entities.
- (6) Therefore, the conclusion of the Council of Europe convention under consideration may affect existing and foreseeable future common Union rules or alter their scope within the meaning of Article 3(2) of the Treaty on the Functioning of the European Union.

³ E.g. Directive 2001/95/EC on general product safety, OJ L 11, 15.1.2002, pp 4-17, Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, OJ L 210, 7.8.1985, p. 29-33 and sector-specific product safety legislation such as Directive 2006/42/EC on machinery OJ L 157, 9.6.2006, p. 24-86; Directive 2014/53/EU on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment, OJ L 153, 22.5.2014, pp. 62-106; Directive 2009/48/EC on the safety of toys, OJ L 170, 30.6.2009, pp. 1-37; Regulation (EU) 2017/745 on medical devices, OJ L 117, 5.5.2017, p. 1; Regulation (EU) 2019/2144 on type-approval requirements for motor vehicles and their trailers, and systems, components and separate technical units intended for such vehicles, as regards their general safety and the protection of vehicle occupants and vulnerable road users OJ L 325, 16.12.2019), p. 1

⁴ E.g. Directive 2006/123/EC on services in the internal market and sector-specific service legislation such as Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, OJ L 178, 17.7.2000, pp. 1-16; Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers OJ L 133, 22.5.2008, pp. 66-92.

⁵ ~~Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, pp. 391-40.~~

⁶ E.g. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, pp. 1-88; Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, pp. 89-131; Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L 201, 31.7.2002, pp. 37-47; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin OJ L 180, 19.7.2000, pp. 22-26; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation OJ L 303, 2.12.2000, pp. 16-22.

⁷ **Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, pp. 391-40.**

⁸ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE (ARTIFICIAL INTELLIGENCE ACT) AND AMENDING CERTAIN UNION LEGISLATIVE ACTS, COM/2021/206 final.

- (7) In order to protect the integrity of Union law and to ensure that the rules of international law and Union law remain consistent, it is necessary that the Commission be authorised to negotiate on behalf of the Union the Council of Europe convention on artificial intelligence, human rights, democracy and the rule of law **as regards matters falling under the exclusive Union competence**.
- (7a) This Decision should be without prejudice to the participation of Member States in the negotiations for the Council of Europe convention on artificial intelligence, human rights, democracy and the rule of law (the “Convention”) and to any subsequent decision to conclude, sign or ratify the Convention or for the Union to accede to the Convention. In the implementation of the envisaged convention, it would be for the Member States to define, in accordance with Article 216(2) TFEU, their essential security interests and to adopt appropriate measures to ensure their internal and external security while not rendering EU law inapplicable or exempting them from their obligation to comply with EU law.**
- (7b) In view of the special situation resulting from the fact that all Member States are also Members of the Council of Europe, the Member States of the EU present at the negotiations should, in accordance with the principle of sincere cooperation as referred to in Article 4(3) of the TEU, in full mutual respect, support the Union negotiator in carrying out the tasks following from the Treaties.**
- (8) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered an opinion on ...²

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, the Council of Europe (framework) convention on artificial intelligence, human rights, democracy and the rule of law, **as regards matters falling under the exclusive Union competence**.

Article 2

The negotiations shall be conducted on the basis of the ~~The negotiating directives are set out in the Annex~~ **to this Decision which may be revised and further developed as appropriate depending on the evolution of the negotiations.**

⁹ **Reference of the Opinion of the EDPS to be added once available.**

Article 3

The negotiations shall be conducted in consultation with the Working Party on Telecommunications and Information Society and with Telecommunications and Information Society Attachés ~~[name of the special committee to be inserted by the Council]~~.

The Commission shall regularly report to the special committee referred to in the first subparagraph on the steps undertaken pursuant to this Decision and consult it on a regular basis.

Whenever so requested by the Council, the Commission shall report to it on the conduct and the outcome of the negotiations, including in writing.

The Member States shall support the Commission in carrying out the tasks following from the Treaty with a view to ensuring unity in the international representation of the Union in accordance with the principle of sincere cooperation as referred to in Article 4(3) of the TEU. Member States are subject to a duty of close cooperation with the Commission, in order to facilitate the achievement of the Union's tasks and to ensure the coherence and consistency of the Union's action and its international representation.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*

ANNEX

to the Recommendation for a Council Decision authorising the opening of negotiations on behalf of the European Union for a Council of Europe convention on artificial intelligence, human rights, democracy and the rule of law

Regarding the process of the negotiations, the Union should aim to achieve that:

- (1) The negotiation process is open, inclusive, ~~and~~ transparent, ~~and evidence-based on robust evidence and~~ and is based on cooperation in good faith.

- (2) The negotiation process is based on an inclusive consultation process and enables meaningful participation for all relevant stakeholders, including civil society, the private sector, academia, non-governmental organisations, standardisation organisations and other relevant actors with expertise relating to the regulation of the design, development and application of artificial intelligence (AI) systems.
- (3) All inputs received from all negotiating Parties are considered on an equal basis to ensure an inclusive process.
- (4) The negotiation process is based on an effective and realistic work programme for the elaboration of the (framework) convention.

Regarding the general objectives for the negotiations, the Union should aim to achieve that:

- (5) The convention is compatible with EU single market law and other areas of EU law, including its general principles of EU law and the fundamental rights and freedoms as enshrined in the EU Charter of Fundamental Rights and implemented through secondary EU legislation.
- (6) The convention is compatible with the proposed artificial intelligence act (AI act)¹⁰, taking into account future developments in the legislative process.
- (7) **The aim of the convention is to ensure full consistency with respect for human rights, the functioning of democracy and the observance of rule of law in the developing, designing and applying of AI systems.** The convention serves as an effective and future-proof regulatory framework for AI with a view to ensuring a high level of protection of human rights and preservation of European values, while at the same time fostering innovation, increasing legal certainty and trust; the convention also acknowledges the potential benefits of AI for important public interests, including to protect and facilitate the exercise of human rights in the digital environment, to improve societal and environmental wellbeing and health and to promote technological progress.
- (8) The convention strengthens the international cooperation between the European Union and other European and non-European countries which may accede to the convention.
- (9) The convention **should be based on the Council of Europe's standards on human rights, democracy and the rule of law and** is compatible with existing Council of Europe instruments, in particular the European Convention on Human Rights and its Protocols, Council of Europe Convention No 108 for the protection of individuals with regard to automatic processing of personal data, as amended by Protocol CETS 223, and other relevant Council of Europe legal instruments; the convention avoids duplication with those instruments and any adverse impact on their application or the further accession of any country to them; the convention addresses the novel risks and challenges posed by the

¹⁰ Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain union legislative acts, COM/2021/206 final.

specific features of certain AI systems for compliance with and effective enforcement of existing rights protected under those instruments.

- (10) The convention is compatible with the commitments of the European Union in respect of other international agreements to which it is a party, and avoids any adverse impact on their effective application; in particular, the convention is in line with the Union's international trade commitments and avoids unnecessary or unjustified restrictions on trade.

Regarding the substance of the negotiations, the Union should aim to achieve that:

- (11) The provisions of the convention are fully compatible with EU single market law and other areas of EU law, including the general principles of EU law and fundamental rights, as enshrined in the EU Charter of Fundamental Rights and implemented in secondary EU legislation.
- (12) The provisions of the convention are ~~fully compatible~~ **consistent** with the **objectives and the** provisions of the proposed AI act, **including as regards the scope**, taking into account future developments in the legislative process.
- (13) The provisions of the convention allow parties to grant a wider protection than stipulated in the Convention and in no way undermine the level of protection of fundamental rights and freedoms and the guarantees provided in Union law, including the principle that authorities supervising fundamental rights need to be independent in so far as this is required under EU Law.
- (14) The convention follows a risk-based approach and lays down proportionate, effective and clear rules applicable to public and private entities across the AI value chain, which are meant to minimise the risks arising from the design, development and application of certain AI systems, while avoiding any unnecessary and disproportionate burdens or restrictions on the activities of those entities or constraints on technological development; in particular, the scope and stringency of any regulatory intervention are balanced, justified and scaled in accordance with the levels of risk posed by the AI systems.
- (15) The provisions of the convention are formulated, to the extent possible, in a future-proof and flexible manner to allow consideration of future technological, market, societal and environmental developments related to AI.
- (16) The convention provides for rules for the design, development and application of AI systems which avoid overlaps and provide meaningful added value compared to other relevant international or regional conventions, in particular in the area of data protection; those rules for AI are compatible with such conventions and with international human rights standards.
- (17) The convention includes provisions for the effective implementation of the rules applicable to the design, development, and application of AI systems, notably with appropriate *ex ante* and *ex post* compliance and control mechanisms, and recognises the role of

standards, certification mechanisms, independent third parties involved in compliance checks and competent supervisory authorities.

- (18) The convention allows for measures in support of innovation, including testing of AI systems and the establishment and operation of regulatory sandboxes to foster AI innovation in a controlled environment under the supervision of competent authorities.
- (19) The convention takes into account the special needs of small and medium-sized enterprises (SMEs), does not disproportionately affect their competitiveness and obliges the Parties to take specific measures to support them.
- (20) The convention takes into account the interest of law enforcement and judicial authorities for the purpose of the prevention, investigation, detection and prosecution of criminal offences, including with regard to the confidentiality and integrity of such investigations.
- (21) The convention provides for effective supervision by competent authorities and cooperation mechanisms that allow for its effective implementation.

Regarding the functioning of the convention, the Union should aim to achieve that:

- (22) The convention includes a disconnection clause that allows the EU Member States, in their mutual relations, to continue to apply EU law in matters covered by the scope of the convention.
- (23) The convention provides for an appropriate mechanism to ensure its implementation and includes final provisions, including on the settlement of disputes, signature, ratification, acceptance, approval and accession, entry into force, amendment, suspension, denunciation and depositary and languages, modelled where possible and appropriate on provisions of other relevant Council of Europe conventions.
- (24) The convention allows for the European Union to become a party to it.

Regarding procedure for negotiations:

- (25) **The Commission shall conduct negotiations on behalf of the Union for matters falling under the exclusive Union competence.**
- (26) **The negotiations, including each negotiation round, must be prepared well in advance. To this end, the Commission shall inform the Council of the schedule anticipated and the issues to be negotiated and shall share the relevant information as early as possible.**
- (27) **In accordance with the principle of sincere cooperation, the Commission and the Member States shall cooperate closely during the negotiation process.**

- (28) The negotiating sessions shall be preceded by a meeting of the Working Party on Telecommunications and Information Society or Telecommunications and Information Society Attachés in order to identify the key issues, formulate opinions and provide guidance.
- (29) The Commission shall report to the Working Party on Telecommunications and Information Society or Telecommunications and Information Society Attachés on the outcome of the negotiations after each negotiating session, including in writing.
- (30) The Commission shall inform the Council and consult the Working Party on Telecommunications and Information Society or Telecommunications and Information Society Attachés on any important issue that may arise during the negotiations.
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